

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JESSICA NELSON,

Plaintiff,

v.

FEDERAL WAY DEPARTMENT OF
PUBLIC SAFETY,

Defendant.

No. C06-1142RSL

ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION
AND ORDER DENYING
PLAINTIFF'S MOTION TO EXTEND
DISCOVERY DATES AND PRETRIAL
SCHEDULING ORDER DEADLINES

I. INTRODUCTION

This matter comes before the Court on plaintiff's combined "Motion to Reconsider Denial of Plaintiff's Motion to Extend Discovery Dates Pursuant to FRCP 16(b)" and "Motion to Permit Substitution of Counsel and Extend Discovery Dates and Pretrial Scheduling Order Deadlines Pursuant to FRCP 16(b)" (Dkt. #22). For the reasons set forth below, the Court denies plaintiff's motions.

II. DISCUSSION

A. Background

On October 18, 2006, the Court issued a scheduling order in this matter setting March 14, 2007 as the deadline for Fed. R. Civ. P. 26(a)(2) expert reports, and May 13, 2007 as the deadline for completion of discovery. See Dkt. #9. On March 28, 2007, plaintiff moved to extend these deadlines by 60 days. See Dkt. #17 (Plaintiff's Motion to Extend Discovery Dates

ORDER DENYING PLAINTIFF'S MOTIONS
FOR RECONSIDERATION AND EXTENSION

1 and Pretrial Scheduling Order Deadlines Pursuant to FRCP 16(b)). On April 17, 2007, the Court
2 denied this request because plaintiff failed to show diligence in attempting to comply with the
3 scheduling order. See Dkt. #20. Plaintiff now moves for reconsideration of the Court's April
4 17th order and moves again for extension of the deadlines to allow for substitution of counsel.

5 **B. Analysis**

6 **1. Plaintiff's Motion for Reconsideration**

7 Motions for reconsideration are disfavored in this district and will be granted only upon a
8 "showing of manifest error in the prior ruling" or "new facts or legal authority which could not
9 have been brought to [the Court's] attention earlier with reasonable diligence." Local Civil Rule
10 7(h)(1). Plaintiff has not met this burden.

11 First, plaintiff claims that a "breakdown of communications" between herself and her
12 attorney, Beth Allen, is "good cause" for an extension of deadlines. See Motion at 2. Plaintiff
13 further explains that she did not provide details of the communication breakdown in her motion
14 to extend discovery dates and pretrial scheduling order deadlines because it would have required
15 revealing privileged attorney-client communications. Id. As a result, accompanying this motion
16 is a motion for the Court to consider an ex parte document purporting to provide "new facts" in
17 support of the motion for reconsideration. The Court has denied this motion, and accordingly,
18 there are no "new facts" before the Court sufficient to warrant reconsideration of the April 17,
19 2007 order.

20 Plaintiff also contends that "it is in the best interest of justice to grant the motion" for
21 reconsideration because of "Plaintiff's good-faith effort to seek a stipulated motion for extension
22 prior to the expiration of the deadline." See Motion at 2-3 (attaching "evidence that Plaintiff's
23 counsel did make a timely good faith effort to seek a stipulated motion to extend discovery
24 dates."). However, as the Court's scheduling order states, the dates in the order "are firm dates
25 that can be changed only by order of the Court, not by agreement of counsel or the parties." See
26

Dkt. #9 at 2. While plaintiff might have been diligent in attempting to obtain a stipulation, plaintiff has not shown diligence in attempting to meet the scheduling order's deadlines. See Dkt. #20 (quoting Zivkovic v. S. Cal. Edison Co., 302 F.3d 1080, 1087 (9th Cir. 2002) ("The pretrial schedule may be modified 'if it cannot reasonably be met despite the diligence of the party seeking the extension.' If the party seeking the modification 'was not diligent, the inquiry should end' and the motion to modify should not be granted.") (citing Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 607 (9th Cir. 1992) (internal citations omitted)); Hansen v. Schubert, 459 F. Supp. 2d 973, 1001 (E.D. Cal. 2006) ("The good cause requirement of Rule 16 primarily considers the diligence of the party seeking the amendment."); In re Imperial Credit Indus., Inc., 252 F. Supp. 2d 1005, 1017 (C.D. Cal. 2003) ("The focus of the 'good cause' analysis under Rule 16(b) is the diligence of the party seeking the modification. . . . The district court may modify the pretrial schedule 'if it cannot reasonably be met despite the diligence of the party seeking the extension.'") (quoting Federal Rule of Civil Procedure 16 Advisory Committee's notes (1983 amendment)). For these reasons, plaintiff's motion for reconsideration is denied.

2. Plaintiff's Second Motion to Extend Discovery Dates and Pretrial Scheduling Order Deadlines

In addition to her motion for reconsideration, plaintiff also moves again for an extension of the scheduling order's deadlines. Plaintiff makes no separate argument in support of this motion – the motion for an extension is inseparable from her motion for reconsideration.¹ As stated above, plaintiff has failed to show diligence in attempting to comply with the Court's

¹ The only distinction plaintiff makes in presenting these two motions is the noting date. See Motion at 1 (caption) (noting the motion for reconsideration for April 30, 2007, and the motion for extension for May 9, 2007).

1 scheduling order. Accordingly, plaintiff's second motion for an extension is denied.²

2 **III. CONCLUSION**

3 For all of the foregoing reasons, plaintiff's combined "Motion to Reconsider Denial of
4 Plaintiff's Motion to Extend Discovery Dates Pursuant to FRCP 16(b)" and "Motion to Permit
5 Substitution of Counsel and Extend Discovery Dates and Pretrial Scheduling Order Deadlines
6 Pursuant to FRCP 16(b)" (Dkt. #22) is DENIED.

7 DATED this 5th day of June, 2007.

8
9 

10 Robert S. Lasnik
11 United States District Judge
12
13
14
15
16
17
18
19
20
21
22

23 ² See generally Johnson, 975 F.2d at 611 ("As the torrent of civil and criminal cases unleashed in
24 recent years has threatened to inundate the federal courts, deliverance has been sought in the use of
25 calendar management techniques. Rule 16 is an important component of those techniques. We will not
26 snatch it away or destroy its effectiveness by requiring district courts to countenance the practices
exemplified by the facts of this case.").